



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 28] नई बिल्ली, मंगलवार, जुलाई 23, 1974/श्रावण 1, 1896
No. 28] NEW DELHI, TUESDAY, JULY 23, 1974/SRAVANA 1, 1896

इस भाग में भिन्न पृष्ठ संलग्न दो जाती हैं जिससे इक पह अलग संकलन के लिए में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 23rd July, 1974:—

BILL No. XXIII OF 1974

A Bill further to amend the Essential Commodities Act, 1955.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Essential Commodities (Amendment) Act, 1974.

(2) It shall be deemed to have come into force on the 22nd day of June, 1974.

10 of 1955.

2. In section 2 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act), in clause (a), after sub-clause (iv), the following sub-clause and *Explanation* shall be inserted, namely:—

'(iva) drugs.

Explanation.—In this sub-clause, "drug" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940;.

23 of 1940.

3. In section 3 of the principal Act, in clause (ii) of sub-section (3B), for the words "where no such price is fixed,", the words "where no such price is fixed, an amount calculated having regard to" shall be substituted.

Short title and commencement.

Amendment of section 2.

Amendment of section 3.

**Amend-
ment of
section 6A.**

4. In section 6A of the principal Act, in the opening paragraph, for the words "may order confiscation of the essential commodity so seized:", the following shall be substituted, namely:—

- "may order confiscation of—
 - (a) the essential commodity so seized;
 - (b) any package, covering or receptacle in which such essential commodity is found; and
 - (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:".

**Amend-
ment of
section
6B.**

5. Section 6B of the principal Act shall be re-numbered as sub-section (1) thereof and—

(a) in sub-section (1) as so re-numbered, for the words "essential commodity", wherever they occur, the words "essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance" shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.".

**Amend-
ment of
section 7.**

6. In section 7 of the principal Act, for sub-sections (1) and (2), the following sub-section shall be substituted, namely:—

"(1) If any person contravenes any order made under section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be.”.

7. In section 10A of the principal Act,—

5 of 1898
2 of 1974

Amend-
ment of
section
10A.

(a) for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted;

(b) the words “and bailable” shall be omitted.

8. After section 10A of the principal Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
10B and
10C.

‘10B. (1) Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

Power of
court to
publish
name,
place
of busi-
ness, etc.,
of compa-
nies con-
victed
under the
Act.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the court.

Explanation.—For the purposes of this section, “company” has the meaning assigned to it in clause (a) of the *Explanation* to section 10.

Presumption of culpable mental state. 10C. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability!.

Substitution of new section for section 12. 9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Special provision regarding fine. 12. Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.”.

2 of

Amendment of section 12A. 10. In section 12A of the principal Act,—

(a) in sub-section (1), for the words “any essential commodity”, the words, brackets, letter and figure “any essential commodity [not being an essential commodity referred to in clause (a) of sub-section (2)]” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences relating to—

(a) the contravention of an order made under section 3 with respect to—

(i) cotton or woollen textiles; or

(ii) foodstuffs, including edible oilseeds and oils; or

(iii) drugs; and

2 of 1974.

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order,

shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code.”;

(c) in sub-section (3),—

(i) for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted;

(ii) for the words “or of fine not exceeding two thousand rupees, or both”, the words “and of fine not exceeding two thousand rupees” shall be substituted;

(iii) for the word and figures “section 517”, the word and figures “section 452” shall be substituted;

(iv) the words “of imprisonment or fine” shall be omitted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.”.

Insertion
of new
section
12B.

Grant of
injunction,
etc., by
civil
courts.

Amend-
ment of
Act 46 of
1952.

11. After section 12A of the principal Act, the following section shall be inserted, namely:—

“12B. No civil court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.”.

12. In section 8A of the Criminal Law Amendment Act, 1952,—

(a) in sub-section (1),—

(i) for the words, figures and letter “referred to in section 12A of the Essential Commodities Act, 1955”, the words, brackets, figures and letters “referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section” shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.”;

(b) in sub-section (2),—

(i) for the words “or of fine not exceeding two thousand rupees or both”, the words “and of fine not exceeding two thousand rupees” shall be substituted;

(ii) the words “of imprisonment or fine” shall be omitted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2) of section 12A of the Essential Commodities Act, 1955 [not being a special order referred to in sub-section (1) of that section] triable summarily under this section and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) of the said section 12A in relation to a special order, all cases triable summarily under this section in relation to such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried by the special Judge in a summary way under this section.”

13. (1) The amendments made by section 10 of this Act to section 12A of the principal Act shall not apply to and in relation to any contravention of a special order referred to in the said section 12A which was committed before the commencement of this Act and accordingly the provisions of that section as they stood immediately before such commencement shall continue to apply to and in relation to such contravention as if this Act had not been passed.

46 of 1952.

(2) The amendments made by section 12 of this Act to section 8A of the Criminal Law Amendment Act, 1952, shall not apply to and in relation to any contravention of a special order referred to in section 12A of the principal Act which was committed before the commencement of this Act and accordingly the provisions of the said section 8A as they stood immediately before such commencement shall continue to apply to and in relation to such contravention as if this Act had not been passed.

2 of 1974.

14. (1) The Essential Commodities (Amendment) Ordinance, 1974, is hereby repealed.

46 of 1952.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, or under section 8A of the Criminal Law Amendment Act, 1952, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, or, as the case may be, under section 8A of the Criminal Law Amendment Act, 1952, as amended by this Act.

Amendments to section 12A of the principal Act and section 8A of Criminal Law.

Amendment Act not to apply to certain contraventions.

Repeal and saving.

STATEMENT OF OBJECTS AND REASONS

In order to make the penal provisions under the Essential Commodities Act, 1955 more stringent and to make their implementation more effective, the Law Commission, in their Forty-seventh Report, has recommended certain amendments to the Act. Apart from this, from the experience gained in the working of the Act, the State Governments and the concerned Ministries of the Government of India have also proposed certain amendments thereto. The amendments mainly relate to the following matters:

- (i) empowering the Collector, under section 6A of the Act, to confiscate, along with the essential commodity, any package, covering or receptacle in which the essential commodity is found and any animal, vehicle, vessel or other conveyance used in carrying the essential commodity;
- (ii) with respect to offences under the presuming *mens rea* on the part of the accused, it being open to accused to disprove it;
- (iii) enhancing the maximum term of imprisonment from five to seven years and providing for imprisonment for a minimum term of three months for the first offence and of six months for the second and every subsequent offence;
- (iv) empowering the court to publish the name, place of business, etc., of companies convicted of offences under the Act in the newspapers, etc., at the expense of the company;
- (v) providing for summary trial of offences relating to contravention of orders (apart from the existing provision for summary trial of offences relating to contravention of special orders) made with respect to cotton or woollen textiles, foodstuffs and drugs;
- (vi) enlarging the scope of section 8A of the Criminal Law Amendment Act, 1952, so as to take within its purview contravention of orders made under section 3 of the Essential Commodities Act, 1955 with respect to cotton or woollen textiles, foodstuffs and drugs also.

2. Since these amendments had to be made in the Essential Commodities Act, 1955 and in the Criminal Law Amendment Act, 1952, urgently and since Parliament was not in session, the President promulgated on 22nd June, 1974, the Essential Commodities (Amendment) Ordinance, 1974, to carry out the aforesaid amendments in the Acts. The present Bill is intended to replace the aforesaid Ordinance.

NEW DELHI;

The 10th July, 1974.

D. P. CHATTOPADHYAYA.

FINANCIAL MEMORANDUM

Under clause 3 of the Bill, sub-section (3B) of section 3 of the Act is being amended to provide that the price to be paid for foodgrains, etc., sold to Government shall be the controlled price or where there is no controlled price, an amount calculated, having regard to the price prevailing or likely to prevail in the post-harvest period. Expenditure will have to be incurred from the Consolidated Fund of India for the price payable for such commodities sold to the Central Government. At this stage, it is not possible to make even an approximate estimate of the expenditure that is likely to be incurred in this behalf.

Clause 4 of the Bill seeks to amend section 6A of the Act to empower the Collector to confiscate also any package, covering or receptacle in which an essential commodity is found and any animal, vehicle, vessel or other conveyance used in carrying the essential commodity. For implementing the provision in respect of confiscation of packages, coverings, animals, vehicles, etc., it may become necessary to employ additional staff. In so far as the Union territories are concerned for implementing this provision the existing staff responsible for confiscation of the essential commodity is considered adequate for confiscation of any packages, coverings, animals, vehicles, etc. as the number of cases is not expected to be very large in the Territories. The additional expenditure, if at all there be any, will be negligible and can be met from the normal budgetary provision.

Under clause 10 of the Bill section 12A of the Act is being amended to provide that all offences relating to contravention of Orders made with respect to foodstuffs (including edible oilseeds and oils), cotton and woollen textiles and drugs shall be tried in a summary way. This may necessitate appointment of special Magistrates and the requisite staff in the Union Territories for attending to such cases. Of the 9 Union Territories, the additional cases in 6 Territories i.e., Arunachal Pradesh, Mizoram, Pondicherry, Dadra and Nagar Haveli, Andaman and Nicobar Islands and Lakshadweep will be negligible and can be attended to by the existing Magistrates and staff. For Delhi, Chandigarh and Goa, Daman and Diu, it may become necessary to employ additional Magistrates and staff and also to incur expenditure towards incidentals. In respect of these items, the expenditure may not exceed Rs. 1 lakh per annum and the non-recurring expenditure may be about Rs. 10,000.

While the expenditure in the case of Goa, Daman and Diu, Mizoram and Pondicherry will be met from their respective Consolidated Funds, the expenditure in respect of other Union territories will have to be met from the Consolidated Fund of India.

B. N. BANERJEE,
Secretary-General.

